

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

R.L. VALLEE, INC.,  
Plaintiff,

v.

AMERICAN INTERNATIONAL  
SPECIALTY LINES INSURANCE  
COMPANY,  
Defendant.

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File No. 1:05-CV-131

**ORDER**

The Magistrate Judge's Report and Recommendation ("R&R") was filed March 16, 2006. (Paper 33.) A Ruling on Motion for Reconsideration ("Ruling") was filed April 14, 2006. (Paper 38.) After de novo review and over objection, the Report and Recommendation and Ruling are both AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

The Ruling has addressed the defendant's concerns in relation to the Court's inquiry on a Rule 12(b)(6) motion. Furthermore, Greene v. Stevens Gas Serv., 177 Vt. 90 (2004) makes clear that a breach of insurance contract claim cannot be recast to support a claim under Vermont's Consumer Fraud Act. See id. at 97 ("a mere breach of contract cannot be sufficient to show consumer fraud").

Defendant's motion to dismiss plaintiff's Vermont Consumer Fraud Act claim (Count Five of Complaint) is GRANTED. Defendant's motion to dismiss the remaining claims is DENIED.

This matter is returned to the Magistrate Judge for further proceedings.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 17<sup>th</sup> day of May, 2006.

/s/ J. Garvan Murtha

J. Garvan Murtha

United States District Judge